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\*CERTIFIED CIVIL TRIAL ATTORNEY

September 24, 1990

VIA FEDERAL EXPRESS

Carolyn Fiske, Esq.  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 2  
26 Federal Plaza  
New York, New York 10278

Re: Hans and Helena Tielmann  
New Vernon Road Satellite Site

Dear Carolyn:

I am writing with regard to the above-referenced matter and your correspondence dated September 18, 1990 which enclosed the Public Health Addendum dated September 14, 1990.

Please be advised that the Tielmanns provided copies of the Public Health Addendum to the employees on September 20, 1990 and that the employees signed copies of the addendum to acknowledge having received this document. Please be further advised that effective September 20, 1990, the employees will not enter the subject property in the scope of their employment until the interim, emergency remedial measures are completed. Mr.

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Tielmann is making arrangements to have the employees begin and end their work days from an off-site location during this time period. While Mr. Tielman choses not to supply names and addresses of his employees, all employees will be provided with copies of all information and updates as received from EPA. All employees will sign copies of the documents acknowledging receipt of same.

I would also like to advise you of the Tielmanns' position and continuing concerns with regard to this matter and the status of their property.

The Tielmanns' met with representatives from the EPA on September 19, at which time they were advised that interim, emergency measures would be performed at the property and that signs would have to be posted advising people of the health risk pertaining to the property. We continue to believe that the public health addendum document and the classification of the property as a health risk are due almost exclusively to the July, 1990 sampling of the Tielmanns' driveway soil samples. Subsequent testing of various dust samples reported asbestos concentrations of less than 1% volume in all samples. I have been advised that the Tielmanns received hard copies of this test

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data during the meeting held on September 19, 1990. We further understand that the results of the ambient air monitoring revealed non-detectable levels of asbestos fibers. Apparently, non-detectable results were also obtained from the air samples taken from within the Tielmanns' residence. We have not yet seen the documents setting forth the air sampling test results, nor have we seen written reports from the Tielmanns' medical tests. We would like to receive these documents as quickly as possible.

Any determination with regard to the classification of the Tielmanns' property must be based upon all data obtained from and at the property, not just an initial sampling result. It does not appear, however, that this has been the case. In all of the Tielmanns' discussions with numerous EPA representatives, the allegation of the health risks associated with the property has been based on a reliance on the vacuum cleaner bag sampling data as the foremost and primary basis for the health risk assessment conclusions. This is also set forth in the Public Health Addendum. As we understand, however, the ambient air sampling results have not demonstrated any detectable levels of asbestos fibers. Yet, to this date, no governmental representative has offered the Tielmanns a straight forward explanation of these

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results and why the latter data has not been considered in the determination of the health assessment review for their property.

With regard to the issue of relocation, the Tielmanns are not willing to relocate from their property for any extended period of time. At the meeting held in my offices on September 13, 1990, EPA and ATSDR representatives recommended that the Tielmanns vacate the property for a period of at least 90 days. The Tielmanns are not willing, and will not, vacate the premises for this period of time.

During the 90 day time frame, the EPA proposes to develop a sampling and testing program to determine the nature and extent of asbestos at the Tielmanns' residence and to implement this sampling program. However, the amount of time to be spent on-site by any governmental representatives during this entire 90 days would be limited to two instances: first, the initial site visit by EPA representatives and potential contractors to determine appropriate locations for samples to be taken. It is likely that this task would be performed in one day. Second, at some period of time thereafter, the site sampling will be performed. It is likely that these site activities would involve activities that would take no more than

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5 working days to complete, and that all work to be performed would be in the normal working hours, i.e. daylight hours.

Given the ambient air testing results to date, and the fact that the property is the primary residence of the Tielmanns as well as the home base for Mr. Tielmann's business activities, the Tielmanns simply will not allow the property to be abandoned during this lengthy period of time. With the property vacant, it would be subject to any vandalism or other damages which the EPA must admit it would have no practical means to prevent and for which the Tielmanns would probably never be compensated. These possibilities are simply unacceptable to the Tielmanns given the data generated by and for the EPA to date.

I also wish to note that I have followed up on the information you provided me and have contacted the Office of General Counsel of the EPA in Washington. This office is handling the relocation procedures for the Tielmanns. I have spoken with the EPA attorney responsible for this matter and he has promised to get back to me to answer the questions I have presented concerning any compensation or reimbursement to the Tielmanns for the various economic losses they would incur in the event of relocation. I have not yet received a response from my

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inquiry, however, it is clear that the EPA has not yet determined what costs or damages would be reimbursable to the Tielmanns, or in what amount. Without this information, the Tielmanns face potential financial losses that cannot be quantified in the event of any extended relocation. Such a situation is simply not acceptable to them.

This does not mean that the Tielmanns are unwilling to relocate from the property for a brief period of time if the EPA is performing activities at the property which warrant such a relocation. At the September 19, 1990 meeting with EPA representatives, I understand that the Tielmanns have been advised that the EPA will finally pursue the paving of the driveway, demolition of the shed, cleaning of the house, possible installation of an air filtration system in the house, and other incidental interim, emergency measures. The Tielmanns are willing to relocate, as appropriate, during the performance of some or all of these activities. However, the time frames for the completion of the tasks, the scope of the tasks and other relevant information and answers will have to be provided to the Tielmanns in order for them to insure themselves that the work will be performed as scheduled and completed as scheduled. In addition, the Tielmanns' expect that security will be provided

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for their home during the temporary relocation period and that this cost will be borne by EPA, as well as compensation for any damages that occur during activities performed in the home.

As I am sure you gathered during our meeting, the Tielmanns are extremely skeptical of the representations made by EPA representatives concerning the nature of the problem at their property and the actions that the EPA proposes to take in response to those problems. Over the past months and years, they have spoken with numerous people from various segments of the EPA, Corp of Engineers and other agencies and have often been given incomplete and/or conflicting information and responses. Indeed, only after it became apparent that the Tielmanns were reluctant to vacate their residence for an extended period of time did the EPA move forward to implement the interim, emergency measures identified above. The samples from the vacuum cleaner bag, however, were collected in July and no immediate, remedial responses were forthcoming from the EPA. The Tielmanns have logically questioned why such immediate responses were not undertaken if the alleged health risk to them was so great. Yet, at the same time all subsequent data received by the EPA regarding asbestos concentrations at the property apparently have not been taken into account in establishing the health risk

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classification for their property; however, notwithstanding this new data, the original vacuum cleaner bag results form the basis for declaring the property a health risk. I must admit these actions and positions are difficult to reconcile. To this date, the Tielmanns continue to receive conflicting information from the various governmental officials and it is apparent to the Tielmanns that there is a lack of coordination and consultation among the individuals and agencies working on this matter.

Finally, I have reviewed the proposed access agreement that you provided to me at our meeting on September 13, 1990. The text of the proposed document was not acceptable to either the Tielmanns or myself and I have redrafted a document that comports with the Tielmanns' request. That is, that access can be granted, and will be granted, for limited periods of time and for specified activities. The Tielmanns are willing to enter into additional agreements upon the expiration of one document, but they are not willing to execute a single document which is open ended as to time. In addition, other than when the EPA is performing analytical or remediation activities on this site, the Tielmanns are not willing to let the EPA restrict access to their property to whomever the EPA may choose. I trust that the revised form of access agreement will be acceptable and provide

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the scope of access necessary for ECRA representatives to perform the tasks proposed.

In summary, the Tielmanns are willing to relocate from their premises for a short period of time in order that the EPA can accomplish the interim, emergency activities. The Tielmanns are not willing to relocate from the premises for an extended period of time, rendering the property vacant for virtually all of that time and be subject to losses and damages which are simply unacceptable. In addition, we would like to receive the data generated from the ambient air sampling that has been performed on the property and any other analytical data that may have been generated to date, and not yet provided to the Tielmanns.

We would also ask that the EPA reconsider its designation of the property as a health risk once the interim, emergency remedial measures have been completed. Once the driveway has been paved, the building demolished and the house cleaned and the remaining remedial items performed, the EPA should certify the property as safe inasmuch as that is the very purpose for performing the interim remediation tasks.

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I know that we are all most anxious to return the Tielmanns' life to normal. It is the Tielmanns' desire to deal with the interim measures expeditiously and cooperatively. It is also in the Tielmanns' interest that the long term issues also continue to be the focus of the EPA's objectives and not be neglected. It is fervently hoped that events similar to those the Tielmanns have experienced recently are not repeated in the future.

Very truly yours,

NORRIS, McLAUGHLIN & MARCUS

  
Herbert B. Bennett

HBB/am  
Enclosures

cc: Mr. and Mrs. Tielmann  
Ms. Pat Seppi

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
ACCESS AGREEMENT  
ASBESTOS DUMP-NEW VERNON ROAD SITE  
BLOCK 225, LOT 30 AND LOT 30.02  
PASSAIC TOWNSHIP, MORRIS COUNTY, NEW JERSEY

1. We, the undersigned, own the property located on New Vernon Road (Block 225, Lot 30 and Lot 30.02), Passaic Township, Morris County, New Jersey (hereinafter the "Site").
2. We, the undersigned, have good title to the Site.
3. We understand that by our signatures, we authorize the U.S. Environmental Protection Agency ("EPA") to undertake interim, emergency Removal Actions as set forth below, which the EPA deems necessary at the Site, pursuant to federal laws, including the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.A. §9601, et. seq.
4. We understand that performance of such Removal Actions <sup>may</sup> ~~will~~ include paving of the gravel driveway, demolition of an existing shed, vacuuming the primary residence, and may also include collecting soil and/or groundwater samples at the Site, stabilizing soil and undertaking other construction and/or excavation actions at the Site relating to the interim, emergency measures identified herein. We understand that the Site will be restored to its original condition upon completion of the remedial investigatory actions.
5. We understand that performance of such Removal Actions may include recommendations by the EPA to prevent unauthorized persons from entering the Site. Such actions may be undertaken upon specific approval from us either orally or in writing to do so, provided however that Hans Tielmann shall be provided access to the Site at all times to remove equipment and materials to preclude a disruption in the Tielmann business activities.
6. By our signatures below, we affirm that we own the Site and we hereby authorize the EPA and its agents to enter upon and perform the Removal Actions set forth above at the Site, for a forty-five (45) day period from the date hereof, which are authorized under CERCLA and any other federal laws.
7. We further understand that EPA will require access at the Site beyond the time frames set forth herein to perform additional tasks and activities. We will agree to provide such access in additional agreements provided same are acceptable to us, which acceptance will not be unreasonably withheld.

\_\_\_\_\_  
Hans J. Tielmann, Site Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Helena Tielmann, Site Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

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